STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 8, 2008
v	No. 277348 Midland Circuit Court
LYNNAE ARMSTRONG LAKE, Defendant-Appellant.	LC No. 05-002558-FH

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of parental kidnapping, MCL 750.350a, interfering with the custody of a minor, MCL 750.138, and domestic violence, MCL 750.812. Because defendant was not denied the right to present a defense, a defense that was not sufficiently articulated, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's 17-year-old daughter LL reported to Child Protective Services (CPS) that defendant was abusing both her and her eight-year-old sister EL. LL claimed that an altercation occurred between herself and defendant. Less than 48 hours later, on May 28, 2004, CPS Investigator Larry Hycki came to the girls' school. In compliance with defendant's prior instructions to the school, she was notified that CPS was at the school. She came and unsuccessfully attempted to stop Hycki from interviewing LL. After defendant learned that the assistant principal's secretary called 911, defendant left the school with EL. She did not return to her home until after August 2005. In the meantime, the Department of Human Services initiated child protective proceedings and a court ordered defendant to return EL. After a foster care worker received an anonymous tip, defendant and EL were located in Portland, Oregon in August 2005.

At trial, defendant maintained that LL initiated the May 2004 altercation, that it did not occur as LL described, and that her actions were merely parental discipline. With respect to the parental kidnapping charge, defendant contended that the prosecution could not show that she intended to retain EL in violation of a court order because defendant believed that proceedings could not be initiated against her unless she had been served with a court order and she had not been. Defendant essentially conceded that she was guilty of interfering with the custody of a minor.

On appeal, defendant argues that she was denied her constitutional right to present a defense when the trial court would not allow her to introduce evidence of an affirmative defense to the kidnapping charge. MCL 750.350a(5) states that "[it] is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect." She cites a portion of the following colloquy, which she argues demonstrates that the court "would not allow evidence that [defendant] had such fear given that one of her children may have been molested in the past."

> *Q*. Now, you were asked about whether you had done background checks on the people you stayed with, Denise or Ms. Luckhurst, or the other folks?
>
> *A*. Right.
>
> *Q*. Did you have any reason to question any of those folks?
>
> *A*. I not only didn't have any reason to question those folks, I don't think I had any ability to do a background check. I think that would be required of the police.
>
> *Q*. Now, have any of your kids ever been molested?
>
> *A*. No.
>
> *[Prosecutor]*: Objection, your Honor.
>
> *THE COURT*: Sustained.
>
> *[Defendant]*: Actually --

Defendant did not raise a claim below that the court denied her the constitutional right to present a defense, nor did she make an offer of proof pursuant to MRE 103(a)(2). Therefore, this issue is unpreserved and we review the issue for plain error affecting defendant's substantial rights pursuant to *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The record does not establish a plain error. There was no basis for the trial court to surmise that the question concerning prior molestation related to an affirmative defense. The context suggested that defense counsel was offering testimony in response to prior questioning by the prosecutor concerning whether defendant took EL to live with people who may have had a criminal background. The record does not establish that the trial court excluded exculpatory evidence, particularly considering that defendant denied that any molestation had occurred. Moreover, there is no basis for concluding that defendant's substantial rights were affected. She references her comment at sentencing that, "I sought to protect the only child that I could. I believe she is being harmed; I believe it is a continual harm that she is in. [LL] was molested back in '99 and that was covered up." Assuming arguendo that defendant desired to present testimony to that effect at trial, her belief that LL was molested in 1999 and that it was "covered up" was not relevant to show her actions several years later "were taken for the purpose of

protecting [EL] from "an *immediate* and *actual* threat of physical or mental harm, abuse, or neglect." MCL 750.350a(5) (emphasis added).

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy